U.S. Department Labor
Employment and Training Administration

OMB Control No. 1205-0134
Expiration Date: November 30, 2012

Agricultural and Food Processing Clearance Order ETA Form 790
Pedido de Empleados para Agricultura y Procesamiento de Alimentos

1. Employer's Name and Address (Number, Street, City, State, and Zip Code)/ Nombre y Dirección del Empleador (Numero, Calle, Ciudad, Estado y Código Postal)

Everett Orchards Ltd.
675 Calkins Rd.
Peru, N.Y. 12972

Telephone number/Teléfono: (518) 643-6824 Fax:

2. Location and Direction to Work Site/ Ubicación y Dirección al Lugar de Trabajo

Everett Orchards Ltd.
675 Calkins Rd.
Peru, N.Y. 12972

3 miles SW of Peru on Calkins Rd. From Peru, heading North on Pleasant St.(State Rte 22B), turn left onto River Rd.. Turn right on Barney Downs Rd. At stop sign, turn left on Calkins Rd. Orchard is .7 miles on right.

Worksite owned and operated by employer.
ET 1/22/13

(If additional space is needed, use separate sheet of paper/ Si necesitas más espacio, utilices otra hoja de papel)

3. Location and Description of Housing / Dirección y Descripción de la Vivienda

675 Calkins Rd., Peru, N.Y. 12972

MLC #1: Concrete block barracks style building including kitchen and bath facilities. All furnishings provided. 20 man capacity.

814 Brand Hollow Rd., Peru, N.Y. 12972

MLC #3: Steel sided frame barracks including kitchen and bath facilities. 30 man capacity. Available only during harvest period (Approximately 9/02/13 to 10/18/2013.

(If additional space is needed, use separate sheet of paper / Si necesitas más espacio, utilices otra hoja de papel)

Nos. 4 - 8 for STATE USE ONLY
Números 4 a 8 para USO ESTATAL

4. Industry Code/Código Industrial: 111331

5. Job Order No. /Num. de Orden de Empleo: NY1047420

6. Occupational Title and Code /Título Ocupacional y Código: Farmworker and Laborer, Crop 45-2092.02

7. Clearance Order Issue Date / Fecha de Tramite: 1/22/13

8. Job Order Expiration Date / Fecha de Expiración: 7/20/13

9. Anticipated Period of Employment / Periodo Anticipado de Empleo

From/ Desde: 03/25/2013 To/Hasta: 11/15/2013

10. No. of Workers Requested / Num. de Trabajadores Solicitados: 5

11. Anticipated Hours of Work per Week/Horas Anticipadas de Trabajo por Semana. Total: 40

Sunday / Domingo _____ Monday / Lunes 8
Tuesday / Martes 8 Wednesday / Miércoles 8
Thursday / Jueves 8 Friday / Viernes 8
Saturday / Sábado _____

12. Collect Calls Accepted from/ Aceptan Llamadas por Cobrar de:

Employer / Empleador Yes/Si ☐ No ■
Local Office / Oficina Local Yes/Si ☐ No ■

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JAN 18 2013

13. Board Arrangements / Arreglo de Alojamiento

From 3/25/2013 to 9/01/2013 and from 10/19/2013 to 11/15/2013, all workers will buy and prepare their own meals.

From 9/02/2013 to 10/18/2013 , occupants of MLC #1 will purchase meals from the commissary and occupants of MLC #3 will buy and prepare their own food.

14. Referral Instructions / Instrucciones sobre cómo Referir Candidatos

Thomas or William Everett, Contact employer during regular business hours, 7 a.m. to 4:30 p.m., Monday through Friday. (518) 643-6824

15. Job Specifications / Especificaciones del Trabajo

Use hand tools such as pruning loppers, handsaws, hand pruning shears, shovels, grub hoes, and rakes. May operate chainsaws and powered polesaws. Duties may include pruning (dormant and summer), hand thinning, picking stones, planting trees, applying pesticides, cleaning, packing, and loading harvested products. May operate tractors up to 75 horsepower with attached equipment to mow, chop brush, move and load harvested products, cultivate, spray, and harvest crops. May pick apples during harvest. Employer will furnish workers, without cost, all tools and equipment required in the performance of the duties assigned. Work in varied weather conditions. During the contract period, temperatures range from below freezing to above 90 degrees F. Workers should report for work with their own suitable work clothing. Workers referred against this order must have 3 months experience in performing the tasks described in this order.

(If more space is needed, summary of Material Job Specifications in ENGLISH can be included in separate document, and may also be included in SPANISH)

16. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)

Crop Activities / Cultivos	Hourly Wage / Salario por Hora	Piece Rate / Unit(s) / Pago por Pieza / Unidad(es	Special Pay (bonus, etc.) / Pagos Especiales (Bono, etc.)	Deductions / Deducciones	Yes/Si	No	Pay Period / Periodo de Pago
Pruning	$ 10.91	$ NA	NA	Social Security / Seguro Social	■	☐	Weekly / Semanal
Orchard Manual Labor	$ 10.91	$ NA	NA	Federal Tax Impuestos Federales	■	☐	☒
Fresh Picking	$ 10.91	$ .80/bu. std .85/bu. dwf.	NA	State Tax Impuestos Estatales	■	☐	Bi-weekly / Quincenal
Equip. Oper.	$ 10.91	$ NA	NA	Meals / Comidas	■	☐	☐
Drop Picking	$ 10.91	$ .55/bu. DROP	NA	Other (specify)/ Otro (especifica)	☐	■	Other / Otro ☐

More Details About the Pay / Mas Detalles Sobre el Pago

Employer will pay a wage that is the highest of the AEWR, the prevailing hourly or piece wage rate, the agreed upon collective bargaining wage, or the Federal or State minimum wage. The meal deduction is only for workers living in MLC #1 from 9/2/2013 to 10/18/2013

(If additional space is needed, use separate sheet of paper. / Si necesitas más espacio, utilice otra hoja de papel)

17. Transportation Arrangements / Arreglos de Transportación

Employer agrees to reimburse inbound transportation and subsistence expenses to each worker or any person, government agency, or private organization which on behalf of the worker has paid or advanced such transportation expenses from the residence, place of last employment, or place of recruitment to jobsite.

(If additional space is needed, use separate sheet of paper. / Si necesitas más espacio, utilices otra hoja de papel)

18. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? ¿ Es la práctica habitual de usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si ☐ No ☐

If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cual es el salario que le pagas al Contratista de Trabajo Agrícola por cada actividad?

19. Unemployment Insurance provided? Seguro de Desempleo? Yes/Si ■ No ☐

20. Workers' compensation insurance provided? Se le provee seguro de compensación/indemnización al trabajador: Yes/Si ■ No ☐

21. Are tools provided at no charge to the workers? / Se les proveen herramientas sin costo alguno a los trabajadores? Yes/Si ■ No ☐

22. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None") / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno")

None

23. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed.
(If there are no such incidents, enter "None") / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidents de este tipo, indique "Ninguno")

None

24. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se radico la oferta (incluya el número de teléfono)	25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya el número de teléfono de su linea directa)
New York State Department of Labor One Stop nearest you (877) 466-9757 ET 1/22/13	New York Department of Labor One Stop nearest you (877) 466-9757 ET 1/22/13

26. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.
Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.

Sam Cuetta, VP

Employer's Signature & Title/ Firma y Título del Empleador Date: 1/16/2013

READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.

LEA CON CUIDADO, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (One-Stop Career Center) constituyen una oferta de trabajo contractuales a las que el One-Stop Career Center, ETA o un organismo estatal es de ninguna manera una de las partes.

Public Burden Statement

The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Migrant and Seasonal Farmworker Program, Room S4209, 200 Constitution Avenue, NW, Washington, DC 20210.

New York State Department of Labor
FORM ETA 790 Attachment #1
Terms and Conditions/Clarifications and Assurances

Job Order Number: _____

A: CLARIFICATION OF ITEMS ON FORM ETA 790

Item 3: Housing

a. Housing and utilities are provided at no cost to H-2A workers and those workers in corresponding employment who are unable to return to their place of residence the same day.
b. Housing beds, bedding and mattresses will be furnished at no cost to the workers.
c. Housing will be clean and meet the applicable federal and State housing standards.
d. Workers will be responsible for maintaining housing and surrounding areas in a neat, clean manner.

Item 15: Job Specifications

a. Workers must be able to demonstrate that they are physically able to perform the work as described.
b. Employer may terminate worker with timely notification to the NPC and DHS, if the worker:
    1) Refuses, without cause, to perform work for which the worker was recruited and hired;
    2) Commits serious acts of misconduct; or
    3) Fails, after completing any training or break-in period, to reach production standards
    4) Abandons Job ("Job Abandonment") – is absent for five consecutive previously scheduled days without prior notification to employer.

Item 16: Wage Rates, Special Pay Information and Deductions

The employer will offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment. Employer assures that if a change in the AEWR requires an increase such increase will be paid as of the effective date of the increase. Also if the AEWR is decreased this will become the wage effective of the date of the decrease.

a. If piece rate earnings for total hours of work at a piece-rate during a pay period do not result in average hourly earnings equal to the guaranteed minimum hourly rate, the worker will receive make-up pay to the guaranteed minimum wage rate.
b. In New York State, the only deductions that can be taken from worker pay are:
    1. Those required by law, such as Social Security, income tax, and garnishment of wages;
    2. those that benefit workers and are authorized in writing, such as life insurance, or a savings account

Any other deductions are illegal.

c. The employer guarantees to offer employment for a minimum of ¾ ("three fourths guarantee") of the hours in the workdays during the period of the contract, and all extensions thereof. This guarantee begins with the first workday after the worker's arrival at the place of employment and ends on the date specified on the job order or extensions thereof. In fire, weather or Act of God terminations (as determined by the Certifying Officer) the ¾ guarantee period ends on the date of termination. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such a transfer is not affected, the employer must (1) return the worker, at the employers expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the

workers next certified H2A employer, whichever the worker prefers (2) reimburse the worker the full amount of any deductions made from the workers pay by the employer for transportation and subsistence expenses to the place of employment; and (3) pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employers place of employment. Daily subsistence must be computed as set forth in paragraph (h) of the section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved provide the guarantees in Item 17 (a) below.

d. Workers will not be required to work more than the number of hours specified in the job order for a workday or on their Sabbath or federal holidays to meet this guarantee. The worker's average hourly earnings will be used under this guarantee where wages are paid on a piece rate basis. Workers who are terminated for cause or who voluntarily abandon their job are not entitled to this guarantee if employer provides timely notification to the NPC and DHS.
   On or before each payday the employer will provide to each worker in one or more written statements the following information: (1) the workers total earnings for the pay period; (2) the workers hourly rate and/or piece rate of pay; (3) the hours of employment offered to the worker (showing offers in accordance with the ¾'s guarantee as determined in paragraph (i) of the regulations at 20 CFR sec. 655.122(k), separate from any hours offered over and above the guarantee); (4) the hours actually worked by the worker; (5) an itemization of all deductions made from the worker's wages; (6) If piece rates are used, the units produced daily; (7) beginning and ending dates of the pay period; (8) the employer's name, address, and FEIN.
e. Workers with school age children who have migrated with such children and who depart in time to return home for the beginning of the school year shall be paid, in addition to the basic wages, any bonus or other incentive payments or other expenses to which they would be entitled had they stayed the entire job order period.

Item 17: Transportation

Employer agrees to reimburse inbound transportation and subsistence expenses ($11.13 per day minimum to a maximum of $46.00 per day) to each worker, or any person, government agency or private organization which, on behalf of the worker has paid or advanced such transportation and subsistence expenses, from the place from which the worker has come to work for the employer, whether in the U.S. or abroad to the place of employment, after the worker has completed 50% of the stipulated period of employment, from initial date of need or from the day after actual arrival of worker if later than the stated date to report.

a. Employer will provide or pay the cost of return transportation and subsistence to each worker who completes the employment period, or who is terminated for medical reasons, or as the result of fire, weather or an Act of God (as determined by the Certifying Officer), from place of employment to place of recruitment, except if the worker prefers not to return to his place of recruitment and has subsequent employment with an employer – see Item 16 (c) above. Employer will not be responsible for providing return cost of transportation and subsistence from place of employment to place of recruitment if the worker voluntarily abandons the job or is terminated for cause and employer provides timely notification to the NPC and DHS.
b. The amount of the transportation payment will be equal to the most economical and reasonable similar common carrier transportation charges for the distance involved. All transportation provided by the employer will be by common carrier or other transportation facilities which conform to the applicable regulations of the Interstate Commerce Commission or the United States Department of Labor. If requested by the worker, the employer will assist in making transportation arrangements. The amount of daily subsistence will be in accordance with current rates published in the *Federal Register* (for workers with and without receipts).
c. If requested by the worker, employer will assist in making transportation arrangements.
d. Employer will provide transportation, at no cost to the worker, from the employer provided housing to the actual work site and return at the end of the day.

Item 21: Tools and Equipment

The employer will furnish without cost all tools, supplies, or equipment required in the performance of work.

B: OTHER CLARIFICATIONS AND ASSURANCES

1. The employer agrees to abide by the regulations at 20 CFR 653.501 and 20 CFR 655.135.
2. The employer will expeditiously notify the State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment.
3. Outreach workers shall have reasonable access to the worker in the conduct of outreach activities pursuant to 20 CFR 653.501(xvi).
4. Where appropriate, the employer is certified in the use and application of pesticides per Federal Environmental Protection Agency and State Department of Environmental Conservation requirements. The employer assures that workers hired under this order who will be handling pesticides will be provided appropriate training.
5. The employer will provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the workers in a language understood by the worker
6. The employer assures that if acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on the order, he has a valid federal FLC certificate or FLCE identification card.
7. The applicant assures that he/she complies with NYS registration requirements. Farm labor contractors anticipating employment contracting with growers or processors in New York State, growers or processors in New York State who use the services of a farm labor contractor, and growers or processors in New York State who, without using the services of a farm labor contractor, are responsible for bringing into the state five or more out-of-state migrant farm or food processing workers, including H-2A workers, are required to register with the New York State Department of Labor and pay a registration fee in addition to any other fees that may be applicable.

Employer Signature Tom Everett, VP

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New York State Department of Labor

Form ETA 790 -- Attachment #2 Additional Information

Item 1:

Employer: EVERETT ORCHARDS LTD.

~~Agent~~ **Email:** everappl12972@yahoo.com

~~Agent Fax:~~

Item 13: Board Arrangements 3/25/2013 to 9/01/2013, 10/19/2013 to 11/15/2013

Employer will ☒ **will not** ☒ provide three meals per day and will deduct $ 13.00 per day.
9/02/2013 to 10/18/2013 IN MLC #1

Employer **will** ☒ will not furnish free dishes, cooking utensils and convenient kitchen and cooking facilities. 3/25/2013 – 9/01/2013, 10/19/2013 – 11/15/2013 MLC #1
9/02/2013 – 10/18/2013 - MLC #3

Employer **will** ☒ will not ☐ provide transportation to assure workers access to stores where they can purchase groceries and/or other incidentals and/or medical necessities.
3/25/2013 - 9/01/2013, 10/18/2013 – 11/15/2013 MLC #1
9/2/2013 - 10/18/2013 MLC #3

Item 15: Job Specifications

~~The employer will provide _____ days of training and/or allow _____ days of work for worker to reach production standards if applicable.~~

Production Standards (if applicable):Employer will expect worker to: pick a minimum of ~~70~~ 60 1 1/8 bu boxes with no more than 4 % bruising per day.

Workers hired under this order will be required to show evidence of the right to work in the United States.

Item 16: Wage Rates, Special Pay Information and Deductions

When a worker is terminated under any of the provisions In Attachment #1 Item 15B, or if the worker voluntarily terminates his employment, the employer shall not be liable for the three-fourths wage guarantee.

The employer will **not** pay overtime.

The employer does **not** provide disability insurance.

The employer **will** ☒ **will not** ☐ pay unemployment insurance.

Employer EVERETT ORCHARDS LTD.

The employer will provide workers referred through the interstate clearance system 40 hours of work for the week beginning with the anticipated date of need, unless employer has amended the date of need by notifying the State agency no later than 10 business days before the date of need. If the employer fails to notify NYS Department of Labor office, then employer shall pay an eligible worker referred through the clearance system ~~$410.00~~ $436.40 for the first week starting with the originally anticipated date of need. If worker referred fails to notify the NYS Department of Labor of continued interest in the job at least 5 days before date of need, worker will be disqualified from this assurance. Employer **will** ☐ **will not** ☒ require worker to perform alternative work if the guarantee cited in this section is invoked. JE

Alternative work: **N/A**

Employer will maintain adequate payroll records. Workers will be paid weekly on SATURDAY for work through the previous WEDNESDAY

Item 20: Workers' Compensation

The employer assures that Policy # 483 027 9
issued by STATE INSURANCE FUND
Provides the required insurance for injuries arising out of and in the course of employment. Employer's proof of insurance coverage will be provided to the Chicago National Processing Center before certification is granted.